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Undocumented and Undefined: College Admission Policies for America's Hidden Class

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Undocumented and Undefined: College Admission Policies for America's Hidden Class

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TABLE OF CONTENTS

Executive Summary.....	3
I. Introduction	5
II. Methods.....	7
Research Design.....	7
Participants.....	10
Procedures.....	12
Limitations and Constraints.....	13
Ethical Considerations.....	18
Data Analysis.....	23
III. Legal Challenges	24
Federal Law	24
State Law	27
DREAM Act	32
Implications.....	34
IV. Political Challenges.....	36
Identity.....	37
Immigration.....	39
Affirmative Action.....	40
Reforms.....	43
Implications.....	44
V. Case Studies.....	48
Institution A.....	49
Institution B.....	53
Institution C	55
VI. Conclusion.....	59
References.....	61

EXECUTIVE SUMMARY

Some Americans, like myself, may naively believe that every person in the United States has the right to access education although that right may frequently be impeded by financial barriers. Considering all the types of educational institutions, many may never need to question if that right will ever be restricted. However, if any one of these Americans was to ask any one of 65,000 undocumented high school graduates this year s/he may be surprised at how well they could explain the answer. In fact, for many in this class, commencement marks the end of their access to education based upon cost.

In spite of the resources which exist to close the financial gap for other middle to low income students, these resources are unavailable for undocumented students because of their status. A status which frequently resulted from:

- Entrance into the United States without inspection or with fraudulent documents;
- Entrance into the United States legally as a nonimmigrant, but then violated the terms of his/her status and remained without authorization (as cited by E4FC, 2007, p.1).

Their status reveals a unique circumstance because although many students “were brought to the US by parents at a young age and consider themselves American because they have lived in the United States most of their lives, learned English,” and completed most of their formal schooling in the US, the federal government does not. To the contrary these students are far from classification as American because many “lack a way to become legal residents” and in some cases “are not aware of their illegal status” to attempt to change it (E4FC, 2007, p.1). Despite these impediments many students still “believe the pursuit of education is the way to improve his/her future economic opportunities” and that academic excellence in high school is the best start (E4FC, 2007, p.1). These are the students who may choose to look to institutions capable of offering

the financial resources to high achieving students to close the gap: selective private colleges and universities. However, even for many of these institutions, their status and circumstance may still pose significant obstacles.

The primary aim of this study is to investigate the factors which guide undergraduate admission decisions for undocumented applicants in five selective private colleges and universities in the United States, which actively seek to aid low income domestic and international students. While this sample of private higher education institutions is small, the study will expose arguments which may be common in many higher education institutions, both public and private, when discussing undocumented applicants. The study seeks to identify beliefs, values, and factors which may affect admission decisions at the selected institutions. It also seeks to explore the relationship among and degree of influence of those attitudes, beliefs, values or perceptions on admission decisions and how they are manifested in admission policies and practices. To explore these areas, the study is guided the following research questions:

- At selective private institutions, what are the factors shaping admission policies, practices and decisions regarding undocumented applicants?
- How and to what degree does each factor shape the discussion surrounding undocumented applicants?
- Why should private institutions be concerned with this issue now?

This study draws upon examples given by a few private institutions to illustrate the answers to these questions in addition to the legal precedent being established by the outcomes in current lawsuits against institutions. This paper also uses a critical analysis of the current political support and opposition this issue is receiving. In addition, recently proposed legislation, that would provide a path toward citizenship for undocumented students pursuing higher education and resolve the ambiguous future they are currently

facing with regard to access to higher education, is examined and its implications and support discussed.

The study concludes that some private institutions are indeed concerned about the situation because undocumented students are with greater frequency appearing in their applicant pools. These institutions are sympathetic and attracted to these students because they are qualified applicants who are a part of the low income groups which are actively recruiting. Therefore, in accordance with institutional commitments to socioeconomic diversity and academic standards, these students are being admitted. However, many institutions accept these students, but lack consistent policy, interdepartmental communications and on-campus support for these students. All of which, place institutions at risk for the potential political and legal repercussions they wish to avoid by quietly admitted these students.

INTRODUCTION

History

Since 1982, the federal government committed to providing a free K-12 public education to all children, regardless of status. This act contributes to the creation of the number of potential college-bound undocumented students currently graduating from high schools.

Therefore, admission officers in all institutions especially public, may be seeing a drastic increase in the number of undocumented applicants. At selective private colleges and universities across the nation the increase of applications from undocumented students may also be noticeably higher compared to previous years. While for some

institutions this may mean an increase from zero to three, for others the increase may be significantly more. Regardless of the degree, any increase may have implications for admission policies and practices at these institutions.

With an estimated 65,000 undocumented students graduating high school each year, the responsibility for educating these students will fall primarily on public institutions in their home states (E4FC, 2007, p. 1). As with most college-bound students cost will likely be an obstacle to that pursuit. For undocumented students, this reality is even more prohibitive because these students lack access to federal financial assistance, the common source for most students which makes higher education accessible. Although public institutions from these states may offer private scholarships, most likely there will be fewer available than the number of undocumented students who will vie for them. Private institutions, in and out-of-state, may have a greater institutional commitment and/or financial capability to provide the necessary assistance to these students. Therefore, undocumented students may turn to selective private institutions to afford them the opportunity to continue their education. This in turn may account for the increases in applications private institutions may receive from undocumented students.

If and when these increases appear, selective private institutions must be consistent in the admission and financial aid policies and practices applied to these students as they are with other applicants. If the small sample used in this study is indicative of the preparedness of the majority of selective private institutions, then it is an indication that the majority of institutions do not have the necessary admission and financial aid policies and practices in place to provide consistency in making decisions regarding these students. Institutions, at present may be receiving only a few applications

from undocumented persons and should use this time as a good opportunity to begin to establish such policies and practices. Establishing consistency means accurate information can then be provided to counselors who can help advise these students in making appropriate choices.

The contents of the following chapters will include a detailed outline and discussion of the methodology used to conduct the study followed by in-depth descriptions of the institutions and examples of their rationales and difficulties in accepting undocumented students, as well as the solutions they present to overcome those difficulties. Following these case studies, is an in-depth discussion of the federal and state laws related to this issue and description and analysis of the lawsuits that were initiated to force institutions compliance to these laws. The final chapter discusses the political support and opposition this issue faces, the basis for it, and how those arguments are affecting potential support for new legislation to resolve the barriers to access facing undocumented students.

METHOD

a.) Research Design

Qualitative research was the approach chosen in this study to explore factors influencing and shaping the admission policies and practices of selective private tertiary institutions in the United States as they apply to undocumented applicants. Methods conducive for this type of research were employed in this study because, as described by Marshall and Rossman (1999), they are pragmatic, take place in the natural world, are interactive, humanistic, and allow for a more holistic view towards the collection and interpretation of data; more so than a quantitative methodology (Marshall and Rossman,

1999, p. 2). To identify and investigate potential factors contributing to the creation of admission policies and practices for undocumented applicants, one must acknowledge and examine complex relationships, rooted in the participants' and their institutions' contexts. Those contexts intertwined political factors, interpretation of current and proposed law, financial resources, personal and institutional values and beliefs, and community and national attitudes. Unraveling these complexities required an approach that generated data to explore the influence of these variables.

Two primary methods of data collection were used for this study: semi-structured interviews, and document review of newspaper articles, internet message boards, and institutional websites.

Semi-structured Interviews

Semi-structured interviews were selected because, according to McMillan(1996), they serve to obtain data that are comparable across subjects for different participants (McMillian,1996, p.248). They also directed the participants to focus on specific relationships relevant to the topic. In doing so, data could be collected about the financial resources, admission structures and procedures, as well as each participant's perceptions of how political and legal factors shape a conversation involving an undocumented applicant. This snapshot of several elements at a particular moment was critical to the analysis of the relationships which affect the admission decision for an undocumented student.

Semi-structured interviews also provided an opportunity to inquire about the relationships between participant's beliefs, values, behaviors, and perceptions of his

environment as well as himself. An opportunity was also created to ask clarifying questions and encourage the participant's elaboration of those responses. Clarification played a crucial role in understanding the relationships and the degree of influence certain factors had on institutional decisions and actions.

These interviews were a means to uncover the participant's views, institutional practices and policies, gather large amounts of information in a short amount of time, and to access past experiences or memories of the participant in a non-threatening way. As a student in Maxwell's book concludes, the generation of data "rich in detail and embedded in context" was necessary in answering the questions posed in this study (Maxwell, 1996, p.17).

Document Review

The second data collection method was the review of newspapers, message boards, and institutional websites. I was unable to observe the admission committee's decision making process and listen to the conversation surrounding an undocumented applicant; therefore I had to look to documents which corroborated and supported as Rossman and Rallis (2003) stated "values and beliefs of participants", their perceptions of the undocumented student, and perceptions of potential threats and interpretation of political and legal factors (Rossman & Rallis, 2003, p. 116).

Archival data, records routinely gathered by a community, society or organization, further supplemented this method. Newspapers, educational organizations, political speeches, and public message boards also served to provide a historical context,

setting, and gauge larger perceptions in the US which support or oppose undocumented students and issues of access to higher education.

These research methods generated data about the factors which shape admission policies and practices for undocumented applicants within the time constraints of the study. Triangulate of these sources of data served to produce greater credibility for the study.

b.) Participating Institutions and Participants

Participating Institutions

Many selective private institutions in recent years have implemented strategies to increase their attractiveness to populations which are underrepresented on their campuses. These strategies included special recruitment and visitation programs, and the quantity and availability of financial aid. Groups targeted by these initiatives may be women, students of color, low income, first generation or international students. These are the categories into which many undocumented students fall.

The topic required selecting institutions which targeted cultural or socioeconomic groups, via one or all of these special initiatives, in addition to providing, comparatively, the most competitive need-based financial aid packages to admitted students. I chose to select institutions which were private, four year institutions with need-blind admission policies and which represented a cross section of sizes and regions. I felt these commonalities would make other factors affecting admission decisions more easily identifiable and pronounced.

Participants

The nature of the study required that confidential information was shared with me in order to unravel the complex relationships of factors influencing admission policies. The participants would have to be in a position that provided them with access to knowledge about undocumented cases. They should have longevity in their position at the institution in order to address changes in institutional policies and to speak anecdotally about a variety of admission cases. In addition, they would have to be knowledgeable about the financial capabilities, strategic objectives, mission and future direction of the institution; possess an understanding of the constituencies needing to be served through admission decisions; and most importantly, be open to sharing examples of decisions made regarding undocumented students. These criteria meant the participants would have to be elites, or senior officers, because as Marshall and Rossman (1999) articulated, this type of participant is familiar with the legal and financial structures of the institution because of “positions they hold in social, political, financial or administrative realms” (Marshall & Rossman, 1999, p.113).

Participants who were sympathetic to disadvantaged populations and supportive of the research on the topic would be ideal. Since the ideal participants may not be known to me, I depended upon gaining access in two ways: via relationships with my former colleagues, and by articulation of my involvement with a nonprofit designed to increase college access for disadvantaged populations. These introductions gave the impression of me as trustworthy, thereby assuring integrity in the research.

c.) Procedures

Interviews

The study spanned four months and was comprised of eight interviews totaling ten hours. All interviews were conducted through phone conversations, and all participants were asked the same initial questions. Each took time to respond to questions and made referrals if s/he felt another individual could elaborate further on a question. I tried to limit interviews to 45 minutes so as not to occupy too much time. Any clarifying questions were documented and attempts to schedule additional interviews were made. However, additional interviews were not conducted with all participants.

All interviews were conducted from a private room in my home. The participants were in their offices during or after business hours. At the beginning of the interviews, the participants were informed of the purpose of the study. They were also provided a brief explanation of the impetus of the study, its importance, and its future submission as my Master's thesis. I elaborated to participants how the contribution of information would support my work with undocumented students. The participants were then informed of steps that would be taken to protect their identities and those of their institutions, assure their privacy, and uphold the confidentiality of the information they would share with me.

Documents

The documents used were online newspaper articles, advocacy organizations' websites, government websites, message boards, and institutions' websites. Documents were reviewed continuously throughout the four months and spanned a ten year period. If

a legal case or amendment was referenced, I looked for the primary information source for that event or information. I also intentionally reviewed articles from sources in different regions in the US, with various levels of distribution from national papers to local ones and with liberal perspectives to conservative ones.

Data from interviews and the review of documents were stored in a locked undisclosed location and will be destroyed at the completion of this study.

d) Limitations and Constraints

Although the study revealed substantial information with regard to the factors which shape the policies and practices of institutions toward undocumented students, inherent weaknesses existed in the data and collection methodology.

Time

The researcher intentionally designed the study to avoid heavy work periods for the participants. With this in mind, interviews were scheduled within a six week period between January and February. This timeframe was considered ideal because admission officers' availability would not be limited by travel or participation in decision making committees. However, this timeframe still did not create greater ease in making contact with admission officers. Although many were scheduled to be at their institutions, they were not regularly in their offices. These absences were common because, during the review of applications, officers frequently read applications outside of the office. Hence, participants may not have reviewed email or voicemail with the same frequency as other times of the year. This situation may have contributed to the time lag between when the

participant was first contacted by the researcher, when a response was made, and when an interview time and date was scheduled.

In sum, the time of year and schedules of participants were both factors which impeded data collection by creating obstacles in scheduling and limiting the duration of the interviews.

Confidentiality

Upholding and respecting participants' needs for confidentiality at times posed difficulties to data collection and to establish credibility and transparency of the sources and methods used.

The first challenge was attempting to minimize the physical evidence which linked me to the participants as one method to help reduce the risk of discovery of participants' identities. To minimize the potential in this study, the participants refused to convey information via email. The rationale was that electronic messages were traceable and could lead to identification of the participants and implicate their institutions as having participated in the study. However, elimination of this tool also eliminated a convenient method of communicating in light of the scheduling constraints of the participants. Therefore, interviews had to be scheduled and conducted via phone. In a few cases, the appointments had to be rescheduled. The time lag accompanying rescheduling pushed some interviews closer to the end of February and into their busiest month. As a result many initial interviews were rushed or some scheduled participants became unavailable thereby forcing the researcher to seek new participants. The difficulty experienced in scheduling many initial phone conversations indicated that follow-up

interviews would not be possible within the timeframe to complete the study. As a result questions needing further clarification remained unanswered by most participants.

Another method to reduce physical evidence which posed a potential risk to participant identification was not recording interviews. My notes, which were written during those conversations, are the only record of those conversations. Consequently, no other source exists to verify the accuracy of those notes.

Lastly, the confidentiality of information provided and anonymity necessary to protect the participants' and institutions' identities also created difficulties in triangulation of the data. While document review, as a method, is useful for triangulation of data, in this case, it posed a potential danger to that confidentiality by offering another means of identifying the institutions. For example, use of institutional websites as sources for direct citation in the study threatened exposure of the institutions' identities. On the other hand, for a source and methodology to be considered credible, they must be transparent and able to be verified. Both of them are difficult to achieve if anonymity and confidentiality are to be preserved. Therefore, in order to address these competing tensions, the researcher paraphrased the information from websites so as not to enable a reader to identify the institution via an electronic citation. The explanation of the lack of direct source identification is explained in a footnote on the same page.

In sum, the need to protect the participants', their institutions' identities and the information they provided for the study created unforeseen difficulty in establishing credibility and transparency of the study.

Size

The sample size of private institutions used in this study is small. Therefore, generalizing the analyses is not possible. The information, conditions, policies and practices of the private institutions selected in this study may not be representative of other private institutions in the US. Therefore, consideration of the sample size must be made if a reader seeks to make inferences about other private institutions.

Participants

The process of identifying participants, as well as the type of participant needed, posed challenges for conducting this study. Identification of participants was difficult because at present, not all admission personnel at the institutions are aware of the policies addressing undocumented students. Consequently, the initial person contacted frequently referred the researcher to another senior officer. At some institutions, the researcher spoke with two or more individuals before locating the most appropriate one.

Overall, more time than anticipated was spent in attempting to contact the appropriate participants. The contact process was also done via phone and preliminary interviews were scheduled with the potential participants. This difficult coordination was similar to that of contacting and corresponding with the participants represented in the study. The need to have elites, or senior officers, participate also contributed to the difficulty in coordinating the interviews. As Marshall and Rossman (1999) described, a study which depended on interviewing elites, would create challenges for me because of the “difficulty in gaining access to these elusive and busy people operating under demanding time constraints” (Marshall & Rossman, 1999, p. 113). Thus, the participants’ limited availability subjected the study to additional time constraints.

Loss of Institutional Memory

The field of admissions has a high turnover rate. As previously mentioned, most offices only had one person highly knowledgeable about practices and policies relating to undocumented cases. Therefore, the departure of that key person means that institutional memory on this topic may be lost. This was the situation at two of the originally selected institutions. Therefore, information could not be provided because these institutions lacked the institutional memory necessary to answer the questions in the study. Hence, other institutions were sought to replace the original institutions and as a result increased the time needed and difficulty in completing the interviews for the study.

Lack of a Standard for Comparison

At present, compiled and publicly accessible information does not exist on this topic. This lack of information may result from the infrequency of discussions or the disjointed forums in which the topic is raised. Many participants recalled isolated discussions among colleagues in international admissions associations or small regional domestic admission conferences. However, participants noted that they are not openly or formally communicating their policies and practices to peers regionally or otherwise. Therefore, I have no information or knowledge about common policies or practices, apart from those discussed in the study, by which to compare those of the participating institutions.

e) Ethical Considerations

Confidentiality

The need for confidentiality stems from potential legal repercussions which may occur as a result of greater public scrutiny. Therefore, I attempted to provide this confidentiality by protecting the privacy of participants and institutions and by limiting access to the written report.

Protection of the participants' and institutions' privacy is created in part by protecting their identities and in part by refraining from the use of their names and information with others in or outside of the study. To mask their identities, I assigned pseudonyms and used broad descriptions of the location, size, and characteristics of the institutions. To create participant anonymity, I referred to them by a general title of senior officer. I acknowledge, however, that these measures may still not be sufficient to provide complete anonymity, privacy and confidentiality.

To prevent widespread knowledge of the content of the study, I attempted to restrict and control the accessibility of the study to the public. However, this control is limited for two reasons: the study is a written document, participants have a right to view the completed study, and it is archived at CIE.

Even though this study will not be published, it is still a potential source for public information as a written report and as a submission to fulfill an academic requirement. In addition to access via this path, the common practice of enabling all participants to review the findings of the study may also, to a degree, compromise confidentiality and lead to public access. For example participants from educational lobby organizations, used to provide insight into the political factors, displayed particular

interest in reviewing the completed study. While I did not explicitly ask for articulation of their intentions, I assume that the content of this study would provide information helpful to their student populations in making informed decisions. These participants' intentions may also be to supplement their own knowledge base or to distribute or make available the study to students and persons assisting them such as counselors and outreach advisors. As Rossman and Rallis (2003) suggest, the use of the written report and its potential dissemination, once provided to the participants, could go well beyond my control (Rossman & Rallis, 2003, p.74).

Not only does disseminating the report to all participants increase public access, it also potentially compromises the confidentiality I promised to the participants. The study is a compilation of information collected from several institutions not just one. Therefore, giving the final product to each participant means each would have automatic access to the other participants' and their institutions' information, not just the report of his own institution. This is in direct conflict with the confidentiality I promised in stating that information would not be shared with others. The distribution of the study to participants is common practice in qualitative research; this was not explicitly articulated to the participants in this study and may not have been understood by all. Consequently, the participants were not aware that in sharing the final report their information would be made accessible to the educational lobby organizations who might seek to publicly share the findings to advocate for proposed legislation. While participants demonstrated explicit understanding of the purpose and methods of the study, it is unclear if explicit individual consent is then required for this type of dissemination. To reconcile this

ambiguity, I will attempt to obtain explicit permission before providing the completed study to all participants.

Risk to Participants

The admission officers at the participating institutions are required to comply with confidentiality in the discussions of conversations surrounding applicants and particular admission processes. Thus, much information provided for this study is highly sensitive and may be in violation of that confidentiality, depending upon how and what is defined as such by each institution. Therefore, disclosure of the identities of institutions and participants interviewed may place them at risk of job loss or professional ostracism because sharing of this sensitive information for research purposes. In extreme circumstances, the potential risk exists for an individual or institution to be sued. These risks are the reasons confidentiality is imperative.

Benefits to Participants

Despite the potentially severe risks that could be incurred by participants, significant benefits can be obtained as well. As described by several participants, they do not make inquiries into the policies and practices of other institutions with regard to undocumented students. This silence stems from the lack of formal channels to exchange such information and reluctance of institutions to publicly share policies and practices within large formal associations. As a result, most participants stated, “most information is shared informally through personal contacts or in smaller associations’ meetings.” These meetings are more conducive for sharing information among similar or regional

institutions because of the presence of fewer institutions. While the size of these associations facilitates exchange of information, their size also limits exposure to a small sample of institutions. Thus, information which is received is limited in scope, type and frequently region. If this study is shared with all participants, in its entirety, then it provides a mechanism to expose a few to a greater variety of institutions and policies than that represented in smaller associations.

Not only does this research provide a potential mechanism to exchange information, it provides a discreet way to do so. It also is a forum for openly acknowledging the dilemma facing institutions and students. This study may also contribute to a reduction in the isolation and silence created by the inability to share information. Additionally, the study provides a mechanism, without self exposure, for participants to become aware of policies and practices of private institutions in other regions, of various sizes and resources.

A means of communication between institutions is not the only potential benefit. Again, if given permission to share the research with all participants, this study may assist in disseminating appropriate information to undocumented students. Currently, many private institutions, not just those in the study, strategically target underserved and underrepresented student populations. Undocumented students may be represented in those groups. These students may not have access to accurate information about the policies and practices of institutions which affect them. This study would provide a sample and may help shape the questions these students ask in order to make decisions.

While dissemination of this study may potentially increase the risk of attracting unnecessary legal and political attention, this outcome is not guaranteed. If dissemination

is done through the existing channels used by admission officers and counselors to communicate other confidential policies and practices, then access to the greater public will continue to be limited. The information would reach its intended population without availability and exposure to the greater public. I firmly believe that controlled dissemination of this study would assure that it would exist only in this pipeline.

Potential for Explicit or Implicit Coercion

Some of the participants were close, former professional colleagues. This personal relationship may have made them feel some obligation to be participants in this study. However, this potential degree of coercion may have been nominal because some participants denied interviews despite the close relationship ties.

Participants' Rights

Participants were informed in the initial oral or written contact, as well as prior to beginning the interview, the purpose of the study, the impetus in creating the study, the method with which information from interviews would be recorded, and the mechanisms used to create privacy and confidentiality in order to protect the participant and the institution. The method of agreement between the participants and myself was oral because written consent forms, commonly included in qualitative research, were not appropriate for use in this study. They are a written and traceable artifact which would have formally identified the participants and linked them to the researcher. This physical evidence needed to be avoided in this study to protect the privacy of the participants.

Therefore, oral agreements were made by the participants and serve as a valid form of consent.

f.) Data Analysis

The first step in analyzing the data involved review of each interview prior to the next one. The first interview with a participant established a basic framework and some primary issues affecting the decision-making process. The factors were placed in a table for visual reference. Each subsequent interview added details and additional factors to this table.

The next step was observing patterns, themes, and direct or indirect relationships of factors throughout the interviews. Initial factors were identified by my experience. They included: law, financial aid, and commitment to diversity. Other categories like, personal values, community ties, future educational and employment opportunity for the student, institutions' ethical concerns, peer institutions' actions, meritocracy, and on-campus support, arose from the examples provided by the participants.

In order to test my emerging understandings of the factors positively or negatively affecting acceptance of undocumented students, I grouped elements together as they related to a particular rationale. After this, I reviewed a range of newspaper articles and message boards of various sizes, liberal and conservative, and across regions to learn about public opinions and perceptions. From these resources, common arguments and rationales in favor of and opposing undocumented students' access to higher education were recorded. Common themes were again recorded and compared to those of the participants. The frequency of each theme was also tallied with the judgment that those

mentioned more often are potentially more influential. This process was repeated for all factors.

Overall, these methods provided a strong framework to collect the data necessary to explore the questions originally posed in the study. The most influential of which is the obstacle that the current laws pose for undocumented applicants' pursuits of applying and enrolling in institutions of higher education.

LEGAL CHALLENGES

Participants most frequently mentioned the law as the most influential factor in shaping their admission policies and practices. It is most influential because 1.) it determines the financial assistance these students are eligible to receive; and 2.) lack of compliance creates opportunities for lawsuits to be brought against an institution. Therefore, in complying to the laws, participants and their institutions intend to avoid a serious threat posed by individuals who may be politically opposed to undocumented students' access or admission. This compliance, however, means adhering to both state and federal laws; laws which, presently in many states, are conflicting and create ambiguity in their interpretation.

Federal Law

The Illegal Immigration Reform and Immigration Responsibility Act of 1996 reaffirmed that the authority to regulate immigration is exclusive to the federal government (as cited in the CRS Report, 2004, p. 7). This claim explicitly means that all laws relating to undocumented persons are to be determined only at the federal level. In

addition to articulating this authority, Congress specifically addressed the provision of benefits to undocumented residents and thus undocumented students in the 1996 Act. However, ambiguity is argued to exist in defining and categorizing these benefits, and as a result several states have begun or continue to provide in-state tuition to undocumented students. This provision has resulted in several lawsuits brought against states, like Kansas and California, to contest provision of state aid and indirect non monetary benefits like tuition to undocumented students on the basis that this provision is in direct violation of federal law.

In-State Tuition

Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act, IIRIRA, was created with the intention to explicitly prohibit states' provision of in-state tuition rates at public institutions of higher education to undocumented individuals residing in a state. It declares,

an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a state (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration and scope) without regard to whether the citizen or national is such a resident (Cornell Law School, US Code Collection 1623, 2007, para 1).

In his framework analysis presented to the House Education Committee, former chief advisor to the Attorney General on immigration law, Kris Kobach, argues that Congress' intent was explicitly conveyed by the accompanying House Conference Report and again later by Senator Alan Simpson as “This section provides that *illegal aliens are not*

eligible for in-state tuition rates at public institutions of higher education” (Conference Report 104-828, H.R. 2202, Sept. 24, 1996 as cited by Kobach, 2007, p.2). He further explains this means that *all* students, not just a certain portion like those graduates from in-state high schools, who are US citizens; nationals must receive in-state tuition for undocumented students to receive this rate (Kobach, 2007, p.2).

Other Public Benefits

Not only is the provision of tuition to undocumented students said to be denied by federal law, but so is receipt of financial aid. The Higher Education Act of 1965 explicitly makes undocumented students ineligible for receipt of federal financial aid on the basis of their immigrant status and enforces it via status verification procedures (US Dept. of Education, 2007, para 2). Under law, state financial aid is also out of reach as Title 8 Section 1621 of the USC states that an undocumented person is not eligible for any state or local public benefit (as cited by Kobach, 2007, p.2). These benefits are defined as:

...any **grant, contract, loan**, professional license, or commercial license provided by an **agency of a State or local government or by appropriated funds of a State or local government**; and any retirement, welfare, health, disability, **public** or assisted **housing, postsecondary education**, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.
(Cornell Law School, US Code Collection 1621, 2007, para 3).

Under these parameters only students able to demonstrate US citizenship, permanent residency, or special status, like refugee or asylum, are eligible to receive federal and/or state financial aid and housing in a publicly funded building. The rationale is that funds

contributing to these forms of aid result from state and local sources thereby falling under the definition as a public benefit and thus rendering undocumented students ineligible recipients and/or users.

State Law

Two interpretations exist to explain current state laws and their alleged violation of federal law. The first as described by the American Association of State Colleges and Universities is that the “federal government has never issued formal regulations or guidance to the general public to specify how the provision would be enforced, the law has been interpreted and implemented differently by states and their higher education institutions” (as cited in the AASCU, Special Report, 2007).

The second interpretation is fiercely attacked by Kobach for being unsubstantiated despite its acknowledgement by federal law. Federal law, as Kobach (2007) explains, gives state governments the right to pass legislation in opposition to federal law if a federal law interferes with a state government’s ability to pursue its best interests (Kobach, 2007, p.2). Based upon this argument, rationales are put forth by educational lobbyists like those of the AASCU. They reference research conducted in 1997 by the National Research Council which suggests “immigrants, both legal and undocumented with a college education save the government money while those with only a high school diploma actually consume more in services than they contribute in taxes” (as cited in the Smart Student Guide to Financial Aid, 2007, para 8). This would suggest significant support for the assertion that currently federal law prevents states from recouping their social and economic investment in their undocumented populations and is grounds to

contest federal law. This is an investment, states could argue, they are forced to make by the US Supreme Court decision in the 1982 case of Plyer vs Doe, a case which set legal and federal precedent by awarding undocumented students the right to the same free K-12 public education as US citizens (Cornell Law School, Supreme Court Collection, 2007). If this relationship is proven then state governments can, as is their legal right, Kobach (2007) explains, challenge federal law opposing access to higher education for undocumented residents on the grounds that the federal law is in direct conflict with upholding the state government's interest (Kobach, 2007, p. 2).

For numerous states, it could be argued, the loss of authority to make decisions, which affected a growing segment of their populations, handicapped state governments from creating policies which directly affected their economic and social capabilities. State governments' legislations which do provide in-state tuition to undocumented students are merely attempting to re-appropriate power taken from them under the IIRIRA of 1996. The legislation enabled them to use state resources to adequately address barriers to higher education for a significant portion of their population and was not intended as a way to circumvent or violate federal law.

At present, however, Kobach (2007) argued this is untrue and accused states intentionally of passing legislation in direct violation of federal law. He insisted that undocumented students are not able to work legally even after completion of postsecondary education. Therefore, the argument that states had grounds to challenge federal law based upon predicted post secondary education benefits for these persons was contestable (Kobach, 2007, p. 3).

In-State Tuition

Since 2001, more than twenty states proposed or passed new legislation to provide in-state tuition to undocumented residents (AASCU, Special Report, 2007). Some, like Kansas, Utah, Illinois, and New York redefined in-state “eligibility”. Instead of eligibility based upon residency, it is now seen as contingent upon a student’s demonstration of at least three years of attendance or graduation from an in-state high school. Some states, like California and Utah, in addition to redefining eligibility have students file an affidavit of intent stating that the student has filed or intends to file an application to change his immigration status as soon as he is eligible to do so, thus absolving the state of responsibility to enforce intent. Other states, like Texas, do not ask students to declare their immigration status on application forms (Smart Student Guide to Financial Aid, 2007, para 5). In this way, administrators claim no knowledge of a student’s status.

Other Public Benefits

In addition to rationalizing their new legislation, states contest current federal law on the grounds of ambiguity in its interpretation and definition of a benefit. States claim a distinction exists between types of benefits such as monetary, direct and indirect, and status benefits. Furthermore, states allege ambiguity exists in the definition of assistance. Thus, in the Kansas state case, *Day vs. Sebelius*, the state supports provision of in-state tuition to undocumented students on the interpretation that “benefit”, as referred to in federal law, is one which is only directly monetary (Smart Student Guide to Financial Aid, 2007, para 10).

Enforcement of Federal Law

Currently, the most contested issue revolves around who should claim responsibility for the enforcement that states and consequently institutions, do not offer in-state tuition or other benefits are not offered to undocumented students. This is an issue of civil enforcement of immigration law and has “generally been viewed as strictly a federal responsibility” (CRS Report, 2004, p. 7).

At present, the federal government lacks the human and \$206 billion in fiscal resources estimated by the Center for American Progress necessary to devote to the pursuit of identifying and deporting the estimated 12 million undocumented residents in the US (Center for American Progress, 2006, para 1). For this reason strict laws, like those enacted by the IIRIRA, are passed to eliminate incentives, like education and employment, in order to dissuade immigration and impose penalties on persons who continue to contribute to these incentives which encourage residency of undocumented persons. However, passage of the law to address the problem still does not absolve the federal government from its responsibilities to use its resources to enforce it. The new law neither creates a different reality from the one which forced its creation nor does it in any way alter the federal government’s capacity to address the problem through enforcement of laws meant to address the problem.

It is in this context, and questioning of capacity, that states and consequently institutions raise a legitimate issue: “Should states or other agencies be held accountable to allocate their resources for the civil enforcement of federal law particularly in education?” At present, Congress has no authority to compel states to do so, hence civil

enforcement still remains a federal responsibility (CRS Report, 2004, p. 9). Thus, the lack of resources and inability to shift primary responsibility to states pose a huge obstacle to the enforcement of federal law with regard to the issue of access to education and other benefits.

Case Law

A factor which may motivate states and/or institutions to assume more responsibility for civil enforcement of federal law could be the threat of a legal suit. In such a case, a plaintiff must accuse the state or an institution of a violation of the law as the source of or as posing harm to fulfillment of his own rights. To prove this has occurred, however, damages or harm must be demonstrated to have been incurred by the plaintiff. In the situation of the provision of in-state tuition, the only plausible plaintiff Kobach (2007) identifies as directly suffering from harm or discrimination are out-of-state students (Kobach, 2007, p. 2). The plaintiffs may name the person or agency which is considered to be encouraging or enabling undocumented residency, such as a legislator who initiated a bill to offer in-state tuition, the state itself for passing the law, or an individual institution which complies to the law. In this way, the federal government relies on the private sector to enforce its laws.

Lawsuits

Currently, several cases are pushing to set judicial and legal precedent by prosecuting states for legislation challenging federal law or seeking to establish the

responsibility and rights of states to perform civil enforcement of federal immigration law.

One of the more recent cases occurred in 2004. *Day vs. Sebelius*, a Kansas case, was brought forth by out-of-state students challenging the Democratic governor who signed the law. Kobach, the plaintiff's representative, clarifies that no damages were sought. The case was an attempt to set a legal precedent against the alleged unconstitutionality of current state law regarding tuition. The decision was that the case lacked standing based upon its claim that the plaintiff's rights, as assured under the Equal Protection Clause, were violated. Currently, it is in appeal, and a final decision is pending (Kobach, 2007, p.2).

In 2006 a similar class action suit was brought by students against the state of California. However, in this case the plaintiffs seek millions of dollars in damages. They seek to recoup damages for the sum of the difference between in-state and out-of-state tuition rates during their years of attendance at a state institution. The decision is currently pending.

Presently, the object of contention is in-state tuition. As of yet, lawsuits challenging the provision of state aid or a student's residence in a dorm, which may constitute a public housing benefit, have not been raised.

Potential Legislative Solution

The Dream Act

Resolving the evident conflict in the lack of consistency and interpretation of federal and state laws, in addition to defining explicitly the roles, responsibilities, and

resources to be used by the federal or state governments in enforcing those laws, is essential. One component of proposed immigration legislation offers a solution to these problems.

The DREAM Act, as articulated by a senior representative of the educational lobbyist group NACAC, would return the decision-making power to states to address issues involving state college and university fees, state financial aid, and make federal loans available for undocumented residents (Senior officer, personal communication, March 20, 2007)¹. The Act would, in essence, repeal the clause of the 1996 Immigration Act which shifted this authority to the federal government on this issue.

Approval of the Act would also mean reconciliation and realignment of state and federal law, as well as assuring the economic and social benefits to states' population. In these terms, the Act would then provide the missing historical and pragmatic step between federal law, which permits access to primary and secondary education, and the goal of achieving post secondary education benefit. These are benefits which, Kobach challenges under current law, do not exist because undocumented college graduates are ineligible to secure legal employment.

In sum, the Act would eliminate legal ambiguity by creating consistent access to education and unequivocally help to assure the social and economic benefits desired by states for their entire population. The Act offers a potential solution for a population, which as acknowledged in the previous legislation of Plyer vs. Doe, will most likely remain in the US for the rest of their lives (as cited on AASCU Special Reports, 2007, para 6). Given this acknowledgement, the supporters of the Act claim it cannot then be

¹ Citing the officer's name and title would reveal the identity of the person and conflict with confidentiality agreements.

said to create or encourage future illegal immigration as argued by the FAIR, the Federation for American Immigration Reform(FAIR, November 20, 2003, para 6).

Implications for Private Institutions

Although public institutions, unlike private ones, have been the objects of the legal arguments, private institutions still find themselves affected by the conflicting state and federal laws and current legal proceedings. The inability of the federal government to enforce its law does not exempt private institutions from exposure to potential lawsuits challenging other educational benefits such as aid and housing.

Regardless of the institution, “benefits,” such as tuition, state financial aid, and housing, are potential targets for lawsuits, because these components are explicitly addressed in the US Code. Private institutions do not have to be concerned with lawsuits resulting from opposition to provision of in-state tuition to undocumented students because there are no tuition distinctions made between students at private institutions.

With regard to the provision of state financial aid, institutions like those in this study may not have to be concerned about lawsuits on the grounds of this issue. Commonly, financial aid awards to citizens, as described by a senior officer at Institution C, are comprised of federal and private institutional aid; aid which is generated by private endowments. Federal aid is not awarded to undocumented students because the student’s legal status is not verifiable and, in these cases financial aid is awarded from private funds. Therefore, the grounds of use of public funds for aid to these students does not seem applicable.

Another concern related to financial aid which could be raised is the equity of allocating aid. Institutions, like those in this study, use the same criterion for determining the award granted by the institution, need-based. Accompanying this formula is the promise to meet the 100% demonstrated need of all admitted students. In doing so, institutions may eliminate grounds for lawsuits based upon the distribution of aid.

Housing, although not currently being contested, is another benefit that could be disputed according to immigration lawyers (as cited in correspondence to senior officers at Institution A)². Many private institutions are residential colleges and universities. Thus, the housing provided to students may be the product of public, private or a combination of funds. In accordance with case law and the claims of violation of the Equal Protection Clause, harm and discrimination, based upon a disadvantage to citizens, must be demonstrated. Identifying harm or discrimination against a US citizen may be difficult especially in institutions, like those in this study, which guarantee housing to all students.³

Overall, private institutions, like those in the study, do not seem to possess the issues which are contested in the pending lawsuits. This is not to say that potential lawsuits could not still be brought; but based upon current legal precedent, the likelihood seems low. However, private institutions may still run the risk of being sued based upon other areas like housing.

In conclusion, the lack of consistency between federal and state laws have placed public institutions openly at the center of lawsuits contesting non-private forms of financial aid and tuition rate differences awarded to undocumented students. Both of

² Name of lawyer and law firm cannot be cited because they are potential means for identification of the institution. The document cited is part of internal correspondence between senior officers and the law firm.

³ Institutional websites.

these factors are either not present or easily avoided in the private institutions selected for this study. Despite the issues currently subject to prosecution, another potential element is more unique to private institutions than their public counterparts: housing. While currently, this element has not been attacked and is less difficult to trace, it may still pose a reason for institutions to proceed hesitatingly with the acceptance of undocumented students.

Avoiding potential elements that may cause legal scrutiny is only one obstacle institutions must sidestep. The next step is avoiding potential political pressures. This is important because significant political opposition from any major or influential constituency could 1) be impetus for an investigation that might lead to a lawsuit or 2) affect the funding which finances private financial aid that assists undocumented students. These constituencies are made up of trustees, alumnae, as well as administrators, whose opinions may ideologically support or oppose admission and/or the use of resources on undocumented students. Therefore, admission officers must remain aware of the potential contentiousness of their actions and seek to downplay practices which may attract or encourage political opposition.

POLITICAL CHALLENGES

Prior to 2001, the challenge of access to higher education for undocumented students may not have held a sense of immediacy in many states. This may have been the reason the challenge remained unmet. Now, however, the estimated 65,000 yearly undocumented high school graduates may create the impetus to address and resolve this dilemma. The solution is in the proposed Development Relief and Education Alien

Minors (DREAM) Act which would create this access to higher education. This legislation draws significant opposition, some of which may be grounded in assumptions about who undocumented students are, what creates their circumstances, and the potential effects on the higher education system as a whole. While many of these assumptions may frequently be directed to the context of access to public institutions, they also carry significant clout when the context of access to private institutions, like those in this study, is involved.

Identity

Assumptions about the identity of the undocumented student may be critical to understanding individuals who opposed their gaining access. A quick internet search under illegal aliens generated an extensive list whose top stories relate to Mexico. A further review of newspaper articles across the country, large, small, liberal, and conservative, revealed the most publicized identity of the undocumented student is one who is Mexican (“Troubled”, 2007 para 1; “Undocumented”, 2003, para 1; LaO, 2006, para 1). In addition to this public face, these articles all conveyed a similar circumstance, one whose roots are in an illegal entrance into the country. These commonalities in addition to frequent expressions like “Catherine’s story is one of 65,000 like her throughout the U.S” (LaO, 2006, para 5), may suggest other characteristics are common to all undocumented students aside from their inability to access higher education. The public comments, in opposition to the DREAM Act or state laws which facilitated access, are expressed on a variety of public message boards. The reasons articulated for the

opposition suggest that the public perception of this issue is creating access for illegal, uninvited Mexicans.

This public opposition seems to be lacking when the identity and circumstance is not associated with these characteristics, like in the case of Manuel Bartsch, a German undocumented student, whose status resulted from an expired visa. Public responses on conservative and liberal sites which discuss immigration reform carried these comments from readers:

This kid is exactly why I've devoted my adult life to serving in the USAF. It's this kind of person who enriches our country that makes serving an easy choice. It's folks like him that compels many of us to fight for freedom. I hope Sen DeWine can work his magic and get this kid some kind of sanctuary so he can live his dream (McQuiston, Conservative Culture, May 21 2006)!

In this case he didn't bring it on himself, but what do you say about the ones who do?.. It's one thing to try to assimilate. It's quite another to fly the flag of a foreign country at a school, cut classes, and flaunt that you are here illegally (Big Tex, TalkLeft, April 7, 2006).

I will not, however, tar all undocumented immigrants with that brush. And I will ferociously defend the right of people like Manuel Bartsch to remain in the only country they know (Kdog, TalkLeft, April 7, 2006).

Why did immigration authorities hone in on Bartsch and not the millions of illegals, who happen to be predominantly Hispanic, flowing through the southern border (Tate, 2006, para 5)?

Given our same German heritage it seems logical that we should reach out to him (cited by Grant, 2007, para 3).

This evidence suggests that the assumptions about who undocumented persons, and thus students, are and the circumstances which lead to their illegal status play a significant role in the public support or opposition they receive.

Assumptions about their identities and circumstances then involve undocumented students in their campaign to access higher education in three additional and equally heated debates: immigration reform, affirmative action, and the rising cost of higher education.

Immigration

The immigration debate is one in which race, and thus racism, is frequently accused of being an underlying force. This argument may seem validated particularly when the response changes, based upon the identity of the undocumented person. A belief Niall O'Dowd, chairman of the Irish Lobby for Immigration Reform (ILIR), clearly articulates and claims is the reason their political campaign is successfully progressing. "The fact that they're white Europeans agitating for immigration reform is helpful... We can't put a million people in the street, but we have positive political identification and a lot of access to Democrats and Republicans" (cited by Rodriguez, 2007, para 10). He continues to explain the importance of having "sympathetic politicians of the same ethnic background" in advocating on this issue (cited by Rodriguez, 2007, para 11).

The immigration debate is also predominantly revolving around discouraging immigrants from arriving to this country, based upon the perceived opportunity to seek better employment and educational opportunities than in their own countries. However, this argument may not apply to those who are already in this country for a generation. As the public opinions expressed in the Manuel Bartsch case suggest, efforts should be spent on securing borders not deporting those who have been in this country all their life.

According to this logic, overwhelming support, not opposition, should exist for the DREAM Act. This Act will apply specifically to this population and their circumstances. On the contrary, the Act is not about providing an immigration incentive as may be the perception.

Affirmative Action

If race, is a factor, based upon the assumption that undocumented persons are predominantly Mexican, then undocumented students will find themselves involved in another contentious issue involving higher education: affirmative action.

Affirmative action has been contentious in higher education since the late 1990s with legal precedent finally established in 2003 (“Affirmative Action”, 2003). The root of the opposition is expressed from conservative immigration organizations like FAIR. According to their lobbyists, when an undocumented student is allowed into a college, "there is another kid who wasn't admitted because we admitted the illegal alien," says Ira Mehlman, spokesman of the Federation for American Immigration Reform, a national organization that advocates a restrictive immigration policy. "Every time you admit someone who is here illegally, you are necessarily saying no to somebody else" (as cited by Jordan, 2006, para 9). He puts the argument in the context of the reality that institutions have limited enrollment capacity. The logic suggests that, if undocumented students are granted greater access they will automatically be accepted. This may be erroneous unless it assumes preferential treatment is provided to minorities based upon race. This is what FAIR may indeed suggest in its statement “increasing the intake of illegal aliens into these schools will necessarily preclude opportunities for *deserving* U.S.

citizens” (FAIR DREAM Act, 2003, para 4). Regardless of the rationale, the argument suggests preferential treatment would be given to undocumented students in admission practices. However, as many senior officers at the participating institutions expressed, admission of undocumented students is not about political status or affirmative action; it is about quality and accessibility, and these institutions want to make themselves available to the top students.⁴

If this logic is representative of public perception, then private selective institutions, such as those in this study, would come under the same scrutiny they did years ago when affirmative action policies were contested. The constituency voicing the opposition would be those who traditionally have access and attend these institutions: the rich, white applicants.⁵ The enrollment capacity at these institutions is generally low and significantly more competitive than those at many public institutions.⁶ Hence, reforms like the DREAM Act, which seek to facilitate access to higher education, may be viewed as another mechanism to promote affirmative action, thereby usurping the select and few vacancies which exist at these institutions.

Funding Higher Education

The third debate revolves around the public funds which help support all institutions, both private and public, and are generated from income and property taxes. If undocumented students and their parents are believed to not contribute to this public resource which supports higher education, then the argument raises a valid question of why should they be entitled to its use or benefit from it?

⁴ Senior officers and Institutions A and B.

⁵ Institution B website.

⁶ Institutions A, B, C websites.

The federal government prohibits undocumented persons from working in the US, however, it does not prohibit renting or owning a home. While the law may contribute to the perception, that without legal employment, undocumented residents are not able to own property or be forced to or able to pay income taxes, mechanisms and indicators exist to prove otherwise. In 1996 the Internal Revenue Service created a mechanism by which individuals working in the US could pay taxes even if they did not possess a social security number (IRS, 2007, para 1). Any person may be assigned an Individual Taxpayer Identification Number, ITIN. These numbers are used by a range of legally employed individuals simply not eligible for social security numbers, not only undocumented residents. Therefore, undocumented residents are able to pay taxes and thus contribute to funds allocated for federal and state student financial aid and funds used for financing private and public institutions.

Another factor which undermines the claim that, prior to 1996, undocumented residents did not contribute to public funds is the amount in wages recorded to have been withheld and paid into Social Security and Medicare programs. These sums are represented by unclaimed W-2 earnings reports which are deposited and accumulated each year in the Suspense File at the Social Security Administration. This file receives reports with false or incorrect Social Security Numbers on tax returns. According to Stephen Goss, Social Security chief actuary, “three fourths of the total originates from taxes withheld from wages earned by other-than-legal immigrants for Social Security and Medicaid benefits. This suspense file grows with never to be claimed contributions to Social Security and healthcare totaling more than 50 billion dollars a year” (cited by Porter, 2005, para 13). While this fund is not directly linked to funds which are allocated

to higher education institutions, it is an indicator that state and more likely federal taxes are also withheld. However, the state and federal tax systems may not have a mechanism like the suspense files to identify the amount linked to the economic activities of this population.

In sum, common misperceptions about the identity, the circumstances and contributions of undocumented students and their parents play a significant role in the support they receive in their struggle to access higher education.

Proposed Reforms

The Development Relief Education Alien Minor Act (DREAM Act)

In 2001 the 107th Congress introduced the DREAM Act as a means to address the uncertain economic and educational future evident for undocumented students. It was brought forth in the Senate with the bipartisan support of Senators Orrin Hatch, Republic representative from Utah and Richard Durbin, Democrat from Illinois (NILC, 2007 p. 1). It proposed a pathway to citizenship for students who currently lack a way to begin the process. It rested on the provision of granting conditional permanent residency status to students demonstrating the following characteristics:

- Good moral character;
- Arrived in the US more than 5 years ago;
- Arrived in US before age 15 (NILC, 2007 p. 1).

Under the DREAM Act, high school graduates would be able to apply for conditional status. Such status would provide up to six years of legal residency. Within this

timeframe, the student would be required to demonstrate evidence of any one of the following requirements:

- Graduation from a 2-year college;
- Completion of 2 years toward a 4 year degree;
- Or 2 years of service military service (NILC, 2007 p. 1).

After the demonstration of one of the above and after six years, the student with evidence of sustained good moral character would be granted permanent residency (NILC, 2007. p. 1).

In addition to the individual provisions, the DREAM Act would also nullify the federal provision created under the Illegal Immigration Reform and Immigration Responsibility Act of 1996 which usurped state legislative authority in making decisions regarding residency requirements for receipt of in-state tuition rates. In essence, the DREAM Act would explicitly return the authority to the individual states to make decisions regarding eligibility and criteria to be met for receipt of in-state tuition rates.⁷

Implications

Enactment of the DREAM Act for undocumented students would be significant in three areas: college access, future employment, and expedited citizenship.

The Act would eliminate the conflict between federal and state law as it currently exists with regard to tuition rates. Undocumented students would be eligible to receive federal financial aid, and if states so decided, state financial aid. All of this would make education more accessible by being more affordable. Additionally, students would be able to benefit from work study opportunities as well.

⁷ Senior officer at a national educational lobbyist organization. Identifying the name would identify the agency and participant.

Students currently enrolled in higher education would then have the prospect of gainful legal employment upon graduation. The Act would also mean a finite timeframe, as opposed to the current indefinite one, placed on the journey towards citizenship. Students would, more importantly, be able to transition to citizenship without returning to the country of origin during the waiting period.

Implications for Private Institutions

Politically speaking, undocumented students pose a difficult dilemma for private institutions, like those in this study. These institutions support them now and would likely even more so in the future under the DREAM Act. The dilemma is, while not all undocumented students are Mexican an estimated 78 % are Latino (Passel, 2006, p. 2). This percentage is still sufficient to contribute to the public perception that undocumented students will, under affirmative action, be provided preferential treatment. Institutions, like those in this study, are recently emerging from a highly publicized and politicized debate over the constitutionality of affirmative action practices perceived to be represented in the exclusivity of special recruitment programs targeted at students of color and low income students.⁸ Since many undocumented students may fall into both of these categories, public perception may not be easily altered.

In recognition of this potential outcome most of the private institutions in this study have been extremely cautious in creating and openly or formally communicating their policies and practices regarding this type of student. However, the threat of having to weather similar accusations of preferential treatment and justify admission decisions should not deter the creation of policies to address undocumented students. Private

⁸ Institutions A, B, C websites.

institutions, like those in this study, who accept the top students will just have to continue to reiterate the same reasons for their actions, to take the best of the best in the country, not the best of the best in each category.⁹

Passage of the DREAM Act would provide conclusive answers to many of the tangible and intangible outcome questions institutions, like Institution A, struggle with in deciding to admit an undocumented student.

Questions such as:

Are our financial and academic resources well invested if conditions exist prohibiting undocumented students from being able to:

- Significantly improve their economic conditions with the education provided from this institution?
- Seek out additional educational or employment opportunities not otherwise possible without the education afforded from our institution?¹⁰

Are we failing to uphold our institution's mission if the education provided is not sufficient to:

- Assist in the creation of society's future leaders?¹¹

Moreover, is our ethical integrity in tact if we (admission officers)

- Speak of the range and depth of opportunities like career advice, internship and study abroad opportunities, our institution offers its students, if that offer only applies to certain students on campus?¹²

While a definite answer to these questions does not exist, resolving the students' undocumented status would significantly reduce the concern behind these questions.

Greater predictability for citizenship would also resolve the difficult situation many

⁹ Senior officer at Institution C.

¹⁰ Senior officer at Institution A.

¹¹ Institution A website.

¹² Senior officers at Institutions A, B, C.

institutions face with undocumented students: unintentional targeting of them via cultural and socioeconomic recruitment programs. These programs frequently advertise financial aid policies and leverage them as a competitive tool; inadvertently generating interest in and promises of financial accessibility to students. For an undocumented student this may not be applicable. Therefore, many may create false hope because many may be unwilling or unable to offer admission because of the high financial need of the student.

Public Show of Support for Undocumented students

The question still remains how can institutions continue to demonstrate their support of making education accessible to these students and the legislation which could facilitate this accessibility while avoiding great and potentially damaging political opposition? The answer may lie in communicating their support and current challenges to leaders at educational lobby organizations. In doing so, they would protect their individual institutions while still voicing their support in favor of college access for undocumented students by using their political arm, NACAC. The National Association for College and Admission Counselors Association (NACAC), is an umbrella organization for all counseling and enrollment professionals worldwide (NACAC, 2007, para 1). As a large educational lobbyist group, it is able to politically advocate on behalf of both public and private institutions. Expressing supportive opinions to association representatives enables the necessary support to be conveyed without drawing unnecessary attention any one particular institution for its support.

Overall, the political climate significantly affects the support students and institutions are receiving. Unfortunately, the intangibility of public opinion has a very

tangible way of affecting the resources necessary to change the reality facing undocumented students and higher education institutions which seek to support them.

Despite the potential legal and political risks, private institutions are, however, successfully navigating through unclear and various interpretations of the laws, delicately balancing political pressures and are creatively and strategically seeking to support undocumented students. These occurrences are represented in the following case studies. In these examples, the admission and financial aid processes are well articulated, admission officers' concerns and rationales for support are explicitly stated, and a detailed account of the strategies institutions use to address these obstacles is mapped. Thereby providing a step by step guide to identify and assess the values, attitudes, and protocol of each institution. These case studies are also important because they provide the snapshot necessary for the reader to understand how legal and political factors shape the conversation about an undocumented applicant and force the exposure and articulation of particular values and beliefs.

CASE STUDIES

The following case studies provide examples of how private selective institutions define and express their attitudes, values and priorities, enact their beliefs, navigate through legal issues, and address political pressures when making admission decisions regarding undocumented applicants.

The following definitions describe the size and location of the institutions. Institutional size is defined as large if the total student population, inclusive of undergraduate and graduate populations, ranges from 10,000 to 20,000 persons; mid-size

if the range is from 5000 to 10,000; and small if there are less than 5000 students.

Location is equally important to understanding the case studies and is described as: western, central, and eastern United States. The western US includes all states, both northern and southern, west of and including Colorado. The central US boundaries are northern and southern states between Indiana and Colorado. Lastly, the eastern US comprises itself of all northern and southern states east of and including Indiana.

Case Study: Institution A

Description and Background

This small institution in the eastern US is located in a small town. According to the demographics provided by the local planning department, the population of the surrounding community is comprised mostly of students living in the area specifically to attend college.¹³ Historically, the institution has positively contributed to its immediate community through its outreach activities. Recently, however, it has come under criticism, because relative to past efforts, it has the capability to do more. With regard to its student demographic, the institution has traditionally encouraged applications from males of minorities and socio-economically disadvantaged groups. More recently, this institution, whose roots are in Christianity, opened its doors to women as it began to openly and publicly express diversity as an educational priority for its community¹⁴. The institutional commitment to diversity in various forms is evident in the implementation of a variety of recruitment strategies to attract and matriculate students who are

¹³ Information provided by the area's local planning department, however, disclosure of the URL cannot be provided because it is a means of identifying the area and potentially the institution.

¹⁴ Information provided by the institution's website, however, disclosure of the URL cannot be provided because it is a means of identifying the institution

representative of this diversity. These programs, coupled with an increased allocation of financial resources from its billion dollar endowment, are demonstrative of the institution's commitment to diversity particularly socioeconomic diversity.

General Funding Strategies and Selection

The amount of aid awarded to a student is need-based meaning the amount awarded is determined by family income. The underlying assumption with need-based aid is that private aid will be supplemented by federal aid. In the case of ineligibility for federal aid, as in the case of undocumented and international students, the institution's website states that limited financial support exists and admission decisions are made in consideration of this factor.¹⁵

Actualizing Undocumented Cases

According to a senior officer, high need undocumented students, regardless of their home state, who have begun or are in the process of securing permanent residency, are accepted if the institution can provide them with all the financial assistance necessary to attend all four years (Personal communication, January 15, 2007). Additionally, students must be able to provide evidence to verify their conditional status. If verification of their status cannot be made, they will not be considered for admission.

In the admission process, undocumented students are evaluated in the international applicant pool. Their in-process status must be verifiable before an admission decision is made. If a student is accepted, then private funds generally reserved to fund international students are used.

¹⁵ Institution's website.

Full disclosure of the stage of the residency process in which the student is in at the time of applying, is important to admission officers for two reasons. The first, as explained by a senior officer, is the desire for the student to be able to achieve what otherwise might not be attainable for the student without the education provided by the institution. The belief exists that this prospect can be fulfilled only if the student can legally be employed upon graduation or shortly thereafter. The second concern which creates hesitation in accepting undocumented students involves their limitations on campus. “If limitations exist to their educational opportunities on campus compared to other students,” the senior officer reasons, “then are we being fair to the student?” These ethical concerns seem to weigh heavily in the conversation considering that only in-process undocumented students are accepted. Despite the type of diversity they represent through their “unique American experience” (Senior officer, personal communication, January 15, 2007), the reality is that their uncertain future combined with on-campus limitations seem to be the most compelling reasons to exclude them.

On-campus Support

The small size makes Institution A highly centralized in its policy-making, dissemination, and implementation at the departmental level. In many departments, like admissions and financial aid, personnel work closely together. These relationships would account for greater facility and speed in communicating.

Acceptance of an undocumented applicant means three offices are involved and informed: the admissions office, dean’s office, and financial aid office. The admission office notifies the financial aid office of the student’s status and later the dean of students

office. Aside from this notification, no other personnel or departments are notified (Senior officer, personal communication, January 15, 2007). These offices may become resources for the student in the future and may be mechanisms to contribute to the well-being of the student.

A senior officer recounts that because students are unable to work for a wage on campus, and at times need extra money, finding work in one of these offices may be easier because these offices are already aware of the status of the student and may be willing to provide payment in other ways. For example, instead of the exchange of money for services which is prohibited by law, these departments exchange goods for services. One example shared by the senior officer was payment in the form of the purchase of a semester's worth of books or food (Senior officer, personal communication, January 15, 2007). In sum, the impression is the institution does have some structures in place to support the presence of undocumented students.

Case Study: Institution B

This mid-size institution in the eastern US is located in an urban area which, according to data compiled by the US Census Bureau and analyzed by the Immigration and Naturalization Service,¹⁶ would suggest it is home to a large undocumented population. Historically, the institution has built strong relationships based upon cooperation and outreach economically, educationally, and socially within its community.¹⁷ The philosophical roots behind the institution's founding were based in

¹⁶ Information provided by the Census Bureau and INS, however, disclosure of the URL cannot be provided because it is a means of identifying the location and potentially the institution.

¹⁷ Information provided by the institution's website, however, disclosure of the URL cannot be provided because it is a means of identifying the institution.

cultivating diversity of thought and passion for diversity within learning. Initially, these beliefs were grounded in encouraging religious diversity and have since expanded to include gender, culture and socioeconomic attributes to the list. The expansion of the definitions of diversity continue to articulate that difference stimulates learning and diversity contributes to a better education for all.¹⁸ The demonstration of this belief is visible in the initiation of programs which seek to cultivate a critical mass of students from traditionally underrepresented cultural groups and socio-economic backgrounds.

General Funding Strategies and Selection

The amount of aid awarded to a student is based upon income. The underlying assumption with need-based aid is that private aid will be supplemented by federal aid. In the case of ineligibility for federal aid, as in the case of undocumented and international students, they are considered in the context of their financial capacity to actually attend.¹⁹

Actualizing Undocumented Cases

High need undocumented students, by any definition, from any location, like outstanding high need international students, are accepted if the university can provide them with all the financial assistance necessary to attend all four years (Senior officer, personal communication, February 18, 2007).

In the evaluation process, admission officers read these applicants as if they were in the domestic context and speculate on their status according to the parent and visa information provided by the student. Without confirmation and consideration of the

¹⁸ Institution's website.

¹⁹ Institution's website.

student's status, a decision is made and, if accepted, these students, like other international students, will be funded through a private endowment to provide financial aid to students. The admission office informs the financial aid office and, formally or informally, the Dean of Student's office of the student's status (Senior officer, personal communication, February 18, 2007).

A senior officer reflects that the admission officers may be sympathetic to these students and personally believes these students "have a right to access higher education... considering the benefits this country gains from their exploitation" (Senior officer, personal communication, February 18, 2007).

On-Campus Support

While information about the student's status is shared between three offices, no other continuous support or services are offered. The initial step is possible because the mid-size of the institution enables a centralized system for policy making at the departmental level and fosters policy dissemination, communication, and implementation across departments. The senior officer's comments suggest that this initial foundation of support is critical to the student identifying resource people to whom questions can be asked in the future if necessary, thereby providing guidance and advice if necessary.

Case Study: Institution C

Description and Background

This large institution in the central US is located in an urban area which, according to data compiled by the US Census Bureau and analyzed by the Immigration

and Naturalization Service and state center for Urban Economic Development²⁰, would suggest it is home to a large undocumented population. Historically, the institution has always invested in its surrounding community by assisting with urban renewal or facilitating access to educational, economic or social change opportunities for local students.²¹ As a catalyst for education, this institution has always accepted members of underrepresented groups such as women and minorities during times when other institutions refused them admission.²² Openly and publicly, the institution expresses, as a priority, a commitment to diversity in every form. While that diversity has commonly been in the form of culture, religion, and gender, in the past few years it has also taken the form of socioeconomic status. The institutional commitment to attracting and enrolling students with these attributes is embodied in the creation and implementation of special recruitment and funding strategies. As expressed by a senior officer at the institution, “This commitment results from the belief by leaders of the institution that it [the institution] has an obligation to be accessible to more than its traditional wealthy elite constituencies because diversity produces educational benefits for all students.” The senior officer further elaborates, “This commitment may also be due in part to the composition of the administration within the institution, particularly in the Admission and Deans’ offices.” Many leaders and staff in these offices are from the immediate community and possess an ideology and strong personal commitment to reinvest in the community from which they came (Senior officer, personal communication, February 12, 2007).

²⁰ Information provided by a state agency’s website, however, disclosure of the URL cannot be provided because it is a means of identifying the state, city and potentially the institution.

²¹ Information provided by the institution’s website, however, disclosure of the URL cannot be provided because it is a means of identifying the institution.

²²Institutional website.

Despite this ideological commitment to diversity, one type remains most illusive: socioeconomic. The difficulty exists because limits on the financial support necessary to achieve socioeconomic diversity still exist, even in light of the institution's multi billion dollar endowment.

General Funding Strategies and Selection

The amount of aid awarded to a student is based upon income. The underlying assumption with need-based aid is that private aid will be supplemented by federal aid. In the case of ineligibility for federal aid, in the case of undocumented and international students, they are considered in the context of their financial capacity to attend.²³

Therefore, the "need of these students is a factor in the admission decision because this institution makes a promise that, if you are accepted, 100% of the student's financial need will be met" (Senior officer, personal communication, February 12, 2007).

In addition to providing need-based financial aid, the institution offers 125 academic merit scholarships to high achieving students each year.²⁴ The purposes of these scholarships are to act as a competitive tool to attract top students, regardless of income level, and as a bridge to make the institution accessible to low income students. These are the official requirements for determining the recipients of the scholarships. However, as a senior official states, "in practice most of these scholarships are granted to high achieving, low-income students" (Personal communication, February 12, 2007). This practice suggests that these scholarships provide the institution with a tool to achieve socioeconomic diversity.

²³ Institution website.

²⁴ Institution website.

According to the senior official, the scholarships range in amount from partial to full tuition and full costs of attendance, however, the majority only cover partial costs. Not only does the range differ, but so does the designation. For example, of the 125 available scholarships, approximately 25 are designated specifically for students from the local community, and five awards cover the entire cost of attendance. These five are generally reserved for high need students who are ineligible for federal aid. Therefore, undocumented and international students are the primary recipients of these awards (Senior officer, personal communication, February 12, 2007).

With the exception of two awards, the responsibility for selecting the recipients is assigned to a committee comprised of faculty members and admission officers. In designating two full-ride awards, the selection is determined solely by admission officers (Senior officer, personal communication, February 12, 2007).

Actualizing Undocumented Cases

High need undocumented students, by any definition, like outstanding high need international students, are accepted if the university can provide them with the full financial assistance necessary to attend all four years. The availability of few full-ride scholarships to meet the need of these students in comparison to the number of potential recipients suggests a very competitive process. The senior officer mentions that in this competition one characteristic of some applicants is quite advantageous: being a local undocumented student. This type of student has a competitive advantage because awarding a scholarship to this student also aligns with the institution's commitment to

members of its immediate community (Senior officer, personal communication, February, 12, 2007).

Prior to eligibility for the scholarship, undocumented students are first evaluated in the domestic applicant pool. While their legal status frequently is not explicitly stated in the application materials, a senior officer explains, admission officers accurately assess their status from other indicators in the application like an unanswered status question and information provided on parents' education level, occupation, and country of birth. After assessing the status and admissibility of the applicant, the student is later recommended for the scholarships just like international candidates. While undocumented students may simultaneously be candidates for awards made by the faculty committee and the admission committee, they are more frequently and consistently selected as recipients by the admission committee. The rationale behind this trend as a senior officer explains is "the strong commitment to strengthening and giving back to the local community; a sense which derives from the backgrounds and experiences of the admission officers" (Senior officer, personal communication, February 12, 2007).

On-campus Support

The admission and financial aid processes seem to be the last time special attention is paid to the circumstances that affect an undocumented student. Once on campus, students are not provided any additional support because other offices are not notified of their status, recounts a senior officer. Large size is offered as an explanation of the institution's decentralization and therefore an inability to communicate policies

between offices if the impetus did not originate at the highest level, rationalizes the officer. Therefore, he reasons, many policies exist which are contradictory to one another or unable to be followed by the departments which they affect (Senior officer, personal communication, February 12, 2007). This is demonstrated in the following scenario common to undocumented students on campus.

A senior officer describes a common scenario. The admission officers do not notify any other offices about the status of the student. Therefore, the Deans office sends the student, like all other non-citizen and non- resident, the same solicitation to register visa information which is required for the school to send to the Citizenship Office of Homeland Security. This is the policy which the office must follow according to federal law. Multiple reminders are sent to the student when the forms are not returned. After frequent warnings, the student either continues to ignore the forms or approaches an admission officer. That officer then calls the deans office to inquire about the consequences when a student does not return the forms and is informed that the student should simply continue to ignore the reminders. No actions will be taken, only more reminders will be sent. The attitude as conveyed by the senior officer is one of “I don’t need to know” (Senior officer, personal communication, February 12, 2007). In sum, the student will have to learn how to navigate through the system alone.

CONCLUSION

In conclusion, the participating institutions’ admission policies and practices with regard to undocumented students reflect admission officers’ values of fairness and are demonstrative of their commitment to educational access for all. These policies reflect a

great sympathy for the contributions and circumstances of undocumented students. These policies also reflect a value and belief in diversity and the contributions these students make to that diversity that is core to the missions of these institutions. The belief in upholding meritocracy and its reward is also clearly evident. While these are the elements that weigh heavily in wanting to accept an undocumented applicant, the restrictions from current law about financial aid to these students are recognized as primarily shaping the institutions' abilities to accept them. In so much as the laws limit the funding options for these students, and thus, handicaps an institution's ability to admit an undocumented student, another factor also directly affects institutional capabilities. The political pressures from influential constituencies, like alumnae and trustees, must be considered and abated in order to continue to provide the financial support necessary to admit these students. So while many institutions' methods of reducing these political pressures are not conducive to publicly advocating and supporting educational access for undocumented students, greater political support can still be generated via educational lobby organizations. In sum, private institutional admission policies, though creative and supportive of accepting undocumented candidates, may lack in consistency because of the dance necessary to navigate through the changing political and legal factors.

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